

Office of the Attorney General State of Texas

DAN MORALES
ATTORNEY GENERAL

June 20, 1996

Mr. John S. Schneider, Jr. First Assistant City Attorney City of Pasadena P.O. Box 672 Pasadena, Texas 77501

OR96-0994

Dear Mr. Schneider:

You ask this office to reconsider our decision in Open Records Letter No. 96-0357 (1996). Your request for reconsideration was assigned ID# 39803.

In Open Records Letter No. 96-0357 (1996) this office concluded that the City of Pasadena (the "city") had failed to provide this office with the information required by section 552.303(b) and, therefore, the information was presumed to be public unless the city could demonstrate a compelling interest to withhold the information. You requested reconsideration of that ruling on March 28, 1996, asserting that the failure to provide the required information was an oversight on your part. You ask us to find as compelling the "seriousness of this case" and "the voluminous nature of the request." Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 (1977) at 2. You have failed to raise any argument which this office considers compelling. However, having reviewed the documents sent to this office with your request for reconsideration, we find that most of the information responsive to this request, which seeks "all records you may have about Mr. Moises de la O.'s death," is confidential pursuant to article 49.18 of the Code of Criminal Procedure and, therefore, must be withheld under section 552.101 of the Government Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. The documents submitted to this office for review are comprised of a custodial death report and attachments to that report. Article 49.18 of the Code of Criminal Procedure provides in subsection (b):

If a person dies while in the custody of a peace officer or if a prisoner dies while confined in a jail or prison, the director of the law enforcement agency of which the officer is a member or of the facility in which the prisoner was confined shall investigate the death and file a written report of the cause of death with the attorney general no later than the 20th day after the date on which the person in custody or the prisoner died. The director shall make a good faith effort to obtain all facts relevant to the death and include those facts in the report. The attorney general shall make the report, with the exception of any portion of the report that the attorney general determines is privileged, available to any interested person. (Emphasis added.)

After subsection (b) became effective, this office issued a directive about custodial death reports to the directors of jails, correctional facilities, and law enforcement agencies providing, in part, that Part I of the form will be available to the public and that Parts II through V will be classified as privileged. Open Records Decision No. 521 (1989) at 5. In addition, Part V of the report provides for the compilation and submission of supplementary information which, when compiled and attached to the custodial death report, becomes part of the report and may also be withheld from public disclosure. *Id.* at 7.

We conclude that, pursuant to article 49.18 of the Code of Criminal Procedure, as applied through section 552.101 of the Government Code, you must withhold Parts II through V of the custodial death report and all attachments. However, you may not withhold Part I of the report.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

Todd Reese

Assistant Attorney General Open Records Division

RTR/rho

Ref.: ID# 39803

Mr. John S. Schneider, Jr. - Page 3

Enclosures: Submitted documents

cc: Mario Alberto Puga Consul of Mexico 3015 Richmond, Suite 100 Houston, Texas 77098 (w/o enclosures)